

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SHOMAS T. WINSTON,

Plaintiff,

v.

ORDER

LIEUTENANT KOLBO, OFFICER HOLTHAUS,
OFFICER WILKINSON, and SERGEANT BERGER,

23-cv-9-jdp

Defendants.

Plaintiff Shomas T. Winston is proceeding on excessive force claims against defendants Kolbo, Berger, Holthaus, and Wilkinson.

Discovery has not gone smoothly, resulting in a flurry of motions. Winston has repeatedly accused defendants of bad faith in failing to respond to his discovery requests. Winston now moves to compel responses to his discovery requests and asks for sanctions. Dkt. 39; Dkt. 49. Defendants aren't taking any of this lying down, and they've filed their own motion for sanctions. Dkt. 55. Winston moves to strike defendants' reply brief, Dkt. 77, and asks for further sanctions, Dkt. 78.

At the center of the dispute is Winston's request for any recording of his being held in observation cell 402 on Alpha Unit. Winston was escorted to the observation cell on November 8, 2022, after defendants extracted him from cell 215 in Charlie Unit. Defendants have video of the extraction of Winston from the cell, but they don't have video of the events in the observation cell. Defendants say that the observation cell video has not been preserved because Winston did not promptly request preservation. Winston says that he did make that request, and he submits two written information/interview requests that he said went to defendant

Kolbo and security director Cirian. Dkt. 39-4 and Dkt. 39-5. Defendants say these documents are fake and they ask that the case be dismissed as a sanction for lying to the court.

I can't decide the factual dispute concerning the written information/interview requests on the paper record, so I'll set the matter for an in-person hearing. The sole issue for the hearing will be whether Winston actually submitted the two written information/interview requests to prison officials on November 15, 2022. I'll ask the clerk of court to set a hearing date, and to issue of a writ of habeas corpus ad testificandum for Winston's appearance. I expect Winston, Kolbo, and Cirian to appear in person. WSPF staffers Ray and Buss may appear by videoconference; I'll consider requests for any other witnesses to appear by videoconference.

Until I decide the core factual dispute, I'll reserve ruling on Winston's motion to compel, Dkt. 39, and the parties' three motions for sanctions. Dkt. 49; Dkt. 55; Dkt. 78. Winston's motion to strike, Dkt. 77, is denied because the parties will have a further chance to be heard at the evidentiary hearing.

ORDER

IT IS ORDERED that:

1. The clerk of court is directed to set an in-person hearing to address the parties' motions and to issue a writ of habeas corpus ad testificandum for plaintiff's appearance.

2. Plaintiff's motion to strike, Dkt. 77, is DENIED.

Entered January 19, 2024.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge